

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Director of the Manufactured Housing and)
Modular Units Program of the Public)
Service Commission,)

Complainant,)

v.)

Case No. MC-2010-0311

5 Star Homes and Development)
Company, Inc.)

Respondent.)

**DIRECTOR’S MOTION FOR DETERMINATION ON THE PLEADINGS
AND
RESPONSE TO RESPONDENT COUNSEL’S MOTION TO WITHDRAW**

COMES NOW the Director of the Manufactured Housing and Modular Units Program of the Missouri Public Service Commission (“Director” and “Department”), by and through the Missouri Public Service Commission’s (“Commission”) Office of Staff Counsel, pursuant to Commission rule 4 CSR 240-2.080(2), and moves the Commission dispose of the above-captioned Complaint by issuing an order formally non-renewing the 2010 application for dealer registration of 5 Star Homes and Development Company, Inc. (“5 Star” or “Respondent”) and authorizing the General Counsel to seek penalties in Circuit Court as enumerated in Counts 1 through 5 of the Director’s Complaint. In support thereof, the Director states as follows:

Non-Renewal of Dealer Registration

1. As stated in the Director’s Complaint, para. 4 - 6, the Director did not complete processing of 5 Star’s renewal application and a 2010 Certificate of Dealer Registration did not issue because 5 Star had submitted a deficient application.

2. In its September 7, 2010, *Respondent's Answer To Complaint* (Answer), 5 Star states in para. 3: "Respondent was, until December 31, 2009, registered as a licensed Manufactured Home or Modular Unit Dealer. Further responding, Respondent is not operating as a Manufactured Home or Modular Unit Dealer." In para. 4(b), 5 Star states "Respondent is not operating as a licensed Manufactured Home or Modular Unit Dealer."

3. Because 5 Star's averments are not at issue with the ultimate relief sought by the Director, the Director moves the Commission issue an order formally non-renewing 5 Star's application for 2010 dealer registration.

COUNT 1: Failure to Correct Code Violations of the Grady Home

4. In support of the Director's Complaint Count 1, the Director included in his Complaint multiple exhibits of letters and inspection reports that the Director sent to 5 Star about its uncorrected code violations of the Grady Home. (*See Complaint Exhibit 2 with supporting Schedule 1, Exhibit 3 with supporting Schedule 1, and Exhibit 4 with supporting Schedule 1*).

5. In its Answer to Count 1, 5 Star pled "5 Star refuses to answer pursuant to his rights under the 5th Amendment of the United States Constitution."

6. 5 Star's Answer to Count 1 is incomplete under Commission rule 4 CSR 240-2.070(8) and in violation of the rule because Respondent has failed to raise all grounds of defense in both law and fact. 5 Star has pled no facts in its defense therefore its Answer does not comply with the rule, is incomplete and out of time.

7. Missouri Court Rule 55.09 provides that the specific averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleadings. In its Answer, 5 Star did not deny the facts alleged by the Director in Count 1. 5 Star did not plead any facts in defense of its failure to correct the Grady home code violations that were addressed in the Complaint's supporting

exhibits. 5 Star merely asserted a vague 5th Amendment defense unresponsive to the factual allegations of Count 1. Therefore, under both Missouri Court Rule 55.09 and Commission rule 4 CSR 240-2.070(8) and (9), the Commission may deem the Director's averments as admitted.

**COUNT 2: Failure to Arrange for the Setup of the Gordon Home;
COUNT 3: Failure to Arrange for the Setup of the White Home; and
COUNT 4: Failure to Arrange for the Setup of the Mugler Home**

8. In support of the Director's Complaint Counts 2, 3, and 4, the Director included multiple exhibits of documents that were sent to 5 Star regarding its failure to arrange for the setup of the Gordon, White, and Mugler homes. (*See Complaint Exhibit 5 "Director's Letter to 5 Star re: Gordon Home" with supporting Schedule 1 "Gordon Inspection Request/Consumer Complaint Form", Schedule 2 "White Inspection Request/Consumer Complaint Form", and Schedule 3 "Mugler Inspection Request/Consumer Complaint Form"*). 5 Star never delivered and setup the homes purchased by consumers Gordon, White, and Mugler.

9. In its Answer to Counts 2 and 3, 5 Star pled "5 Star refuses to answer pursuant to his rights under the 5th Amendment of the United States Constitution." Therefore, as with Count 1 above, under both Court Rule 55.09 and Commission rule 4 CSR 240-2.070(8) and (9), the Commission may deem the Director's averments as admitted.

10. 5 Star denied the allegations in Count 4 (Mugler Home), however, 5 Star offered no facts in support of its failure to deliver and setup of the Mugler Home. 5 Star's answer to Count 4 is incomplete and fails to comply with Commission rule 4 CSR 240-2.070(8) because Respondent offers no grounds in fact in support of its denial of Count 4.

COUNT 5: Failure to Pay \$200 Grady Home Re-Inspection Fee

11. In support of the Director's Complaint Count 5, the Director included in his Complaint a copy of the invoice for the January 5, 2010 re-inspection (*See Complaint Exhibit 6*) and the results of that re-inspection (*See Complaint Exhibit 3 Schedule 1*).

12. In its Answer to Count 5, 5 Star pled "Respondent refuses to answer pursuant to his rights under the 5th Amendment of the United States Constitution."

13. 5 Star's Answer to Count 5 is incomplete under Commission rule 4 CSR 240-2.070(8) and in violation of that rule because Respondent has failed to raise all grounds of defense in both law and fact. 5 Star has pled no facts in its defense therefore its Answer does not comply with the rule, is incomplete and out of time.

14. Therefore, under both Missouri Court Rule 55.09 and Commission rule 4 CSR 240-2.070(8) and (9), the Commission may deem the Director's averment as admitted.

Response to 5 Star Counsel's Motion To Withdraw

15. On September 29, 2010, 5 Star's counsel filed his *Motion To Withdraw* seeking leave of the Commission to withdraw as Respondent's counsel, stating Respondent had consented to the motion.

16. In response, the Director informs the Commission that Respondent has made no effort at all to address the Complaint allegations with either the Director, any member of the Director's staff, or the affected consumers regarding the homes that are the subject of this Complaint.

17. Furthermore, the record in this case shows a pattern of deliberate foot-dragging and failure to respond by 5 Star. On June 28, 2010, the Commission issued a Notice of Deficiency because Respondent did not file an answer through an attorney.

18. On July 30, 2010, the Commission issued its *Order Setting Prehearing Conference And Directing Respondent to File an Answer Through an Attorney*. That Order set a prehearing conference for August 12th and directed Respondent to file an answer no later than August 12th. Respondent failed to attend the prehearing conference and failed to file an answer by that date.

19. On August 16, 2010, the Commission issued its *Order Directing Respondent To Show Cause* and to "...file a pleading stating why the Commission should not find the company in default and deem the facts, as set out in the complaint, as admitted" and to file a pleading no later than August 31, 2010. Respondent failed to file the pleading.

20. On August 31, 2010, Respondent's counsel filed an *Entry of Appearance and Request for Additional Time* to file an answer. That same day, the Commission issued its *Order Granting Additional Time* to Respondent to file an Answer by September 7, 2010.

21. On September 7, 2010, Respondent filed an Answer pleading the 5th Amendment. Respondent failed to comply with the Commission's August 16th Order requiring the company to state why the facts set out in the Complaint should not be admitted.

22. 5 Star failed to show and plead good cause for its absence at the August 12th prehearing conference and failed to file its answer by that date as ordered by the Commission.

23. For the above stated reasons, the Director respectfully prays the Commission reject 5 Star's Motion to Withdraw.

Conclusion

24. Because 5 Star has failed to provide a complete and timely answer to the Director's allegations as required by Commission and Missouri Court rules. Additionally, because 5 Star has failed to address the facts set out in the Complaint as directed by Commission order, the Commission may deem the Director's averments as admitted. (4 CSR 240-2.070(8))

and (9)). The Commission may make a determination on the pleadings as filed under 4 CSR 240-2.117(2) "...whenever such disposition is not otherwise contrary to law or contrary to the public interest." The Commission may deem the Director's averments as admitted under its own rules. Moreover, it is in the public interest for the Commission to do so in order to provide administrative finality to the homeowners that have been aggrieved by 5 Star.

WHEREFORE, for the reasons discussed above, the Director prays the Commission issue an order that 1) non-renews 5 Star's 2010 application for renewal of dealer registration; 2) enters a finding that 5 Star (i) failed to correct the code violations of the Grady Home within a reasonable period of time in violation of Section 700.045(5), (ii) failed to arrange for the delivery and initial setup of the three (3) homes purchased by Gordon, White, and Mugler in multiple violations of Section 700.100.3(6), and (iii) failed to pay the \$200 Grady Home re-inspection fee in violation of 4 CSR 240-123.095(11); and 3) authorize its General Counsel to seek penalties in Circuit Court and issue other findings and orders as are just and reasonable.

Respectfully submitted,

s/Robert S. Berlin

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the persons listed below on this 5th day of October 2010.

s/Robert S. Berlin

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